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SUPREME COURT OF THE UNITED STATES

October Term, 1934

No. 361

E. W. CLARK,

Commissioner of Insurance of the State of Iowa, as Receiver of Federal Surety Company, Petitioner,

vs.

HARRY O. WILLIARD, W. W. WHEATON, AND C. W. HAY,

As Trustees of Gordon Campbell-Kevin Syndicate, a Common-Law Trust, and Gordon Campbell-Kevin Syndicate, a Common-Law Trust, Respondents.

Brief of Respondents in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Montana

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of Lewistown, Montana
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THE DEMOCRAT, LEWISTOWN, MONT.

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SUPREME COURT OF THE UNITED STATES

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No. 361

E. W. CLARK, as Receiver,

Petitioner,

vs.

HARRY O. WILLIARD, W. W. WHEATON, and C. W. HAY, as Trustees of Gordon Campbell-Kevin Syndicate, a Common-Law Trust, and GORDON CAMPBELL-KEVIN SYNDICATE, a Common-Law Trust,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

Petitioner finds it necessary in order to sustain his petition, to show to this Court that a **Federal question is involved** within the meaning of Subdivision (b) of Sec. 344, Title 28 U. S. C. A. Jud. Code Sec. 237. He is obliged to show that there **is drawn in question the validity of a statute of a state (Montana)** on the ground of its being repugnant to the Constitution of the United States, or to show that a title, right, privilege, or immunity, especially set up and claimed by him, has been denied him by the Montana Court.

I. RESUME OF THE HOLDING OF THIS COURT TO SHOW THAT THERE WAS NO MISINTERPRETATION BY THE MONTANA COURT.

He comes to this Court now faced with the doctrine of res **adjudicata.** His best attack, he thinks, is alleged misinterpretation by the Montana Court, of the clear opinion of the learned Justice of this Court. We shall see that it is petitioner, and no one else, who is guilty of misinterpretation.

To show that there is no Federal question involved which has not already been decided, let us briefly and fairly sketch the decision which remanded the case for further consideration by the Montana Court.

II. THE STATUS OF CLARK WAS GIVEN FULL RECOGNITION. THIS COURT LEFT IT TO THE MONTANA COURT TO SAY WHAT SUCH STATUS ENTITLED HIM TO IN MONTANA.

After passing upon the question as to the jurisdiction of the Court under the facts in the record and holding that the Court had jurisdiction, the Court declared the following things:

(1) That the action did not abate in Montana upon dissolution in Iowa of the defendant corporation. The holding of the Montana Court on this was unequivocally approved and is now res adjudicata. Clark v. Williard, 54 S. Ct. 615, 78 L. Ed. 743.

(2) That inasmuch as the Supreme Court of Montana misunderstood, or rather misinterpreted, th. status of petitioner as fixed by Iowa law and decree, its consequent application of the recognized rule of public policy that such title as that of receiver would not be recognized in derogation of rights acquired by local citizens, there resulted a denial of faith and credit to the Iowa judgment. In view of the settled rules of law as to the application of such a doctrine in favor of local cred-

itors where a receiver was involved, it was certain that if his status were wrongly interpreted there was a denial of that faith and credit which should have been accorded.

(3) This Court then said: "As his title is not the consequence of a decree of a court whereby a corporation still in being has made a compulsory assignment of its assets with a view to liquidation * * * his title is a consequence of a succession established for the corporation by the law of its creation * * *," the Court was obliged to return the case to the Montana Court that it might pass upon the question in the light of this Court's interpretation of that status saying, "whether it would have favored that conclusion if it had correctly interpreted his standing, its opinion does not tell us. The case should go back to the end that the priority of the execution may be determined with understanding of the title displaced and over-ridden."

It was certain that there still remained a question within the jurisdiction of the Montana Court to determine else it would have been idle to use the language last quoted.

(4) The Court conceived that the rule of public policy, applying to receivers, was not so universally applied to liquidators such as it had just determined petitioner to be. There was no holding that the Montana Court must say, in effect (a) We are commanded by the Supreme Court to declare Clark a "Liquidator" or a "statutory successor," instead of a receiver; **and,** (b) as a matter of course, **after we have done so, say that he has a title superior to local attaching creditors.** Far from such a holding. This Court said, as a result of its determination that he was a liquidator and not a receiver: "In thus holding **we do not say that there is an invariable rule** by which the title of a statutory liquidator must prevail over executions and attachments outside of the State of his appointment." After citing the cases,

pro and con, on that subject including a statement from Disconto Gesellshaft v. Umbreit, 208 U. S. 570, 28 Sup. Ct. 337, 52 L. Ed. 625, and after citing Schloss vs. Metropolitan Surety Co., 149 Iowa 382, 128 NW, 384 and other cases to show that some courts declare a public policy which permits local liens to have superiority, while other courts hold that they had no such public policy, this Court said: "Whether there is in Montana a local policy * * * whereby judgments and attachments have priority over the title of a charter liquidator, is a question as to **which the Supreme Court of that state will speak with ultimate authority.**" Why, it may be asked, does the Supreme Court thus defer to Montana? The undoubted answer is: State Court decisions are a finality on matters of local law over which as we shall see, the Iowa Court pronounced the status. Montana had the right to declare what one with such status may take in Montana. Petitioner, in making the contentions he does, is to say the least, disingenous. To contend as he does, indicates that these views of this Court were unwarranted—at least unnecessary.

It may be said, in passing, and with the utmost respect for this Court, that the learned Justice in reviewing the decisions, pro and con, failed to exhaust the list of authorities holding to the view that state public policy does favor local creditors, in cases of liquidators, the same as in cases of receivers. Persons with Clark's status are not always called liquidators. Later on we give a complete list of those decisions the doctrine of several of which have received the approval, from time to time, of this Court.

(5) As an added reason why petitioner and not the Montana Court has misconceived the decision, the learned Justice proceeds to search the Montana decisions to ascertain if such

public policy plainly appeared through a perusal of the statutes or decisions of Montana. If such public policy existed we know the learning of this Court to be such that this Court would then have in effect said:

"Montana's public policy is that the rights of local creditors do over-ride the title of a statutory liquidator, therefore we hold as we have heretofore held, in such a case; and as is indicated above, that controls."

Had the Court been able to determine this matter from clear and unmistakable decisions of the Montana Court or from its legislative enactments, this Court would not have said: "We have no thought to impose our reading of the local statutes and decisions upon the courts of the locality. What we are about to say as to their meaning does no more than explain the grounds for our understanding that the courts of Montana have left the question open. If the law were clear beyond debate, as counsel for the respondents has contended that it is, our duty might be to dispose of the entire controversy now instead of remanding it to the state court for further action there."

Why, if such public policy is wholly immaterial as contended by petitioner, the ascertainment thereof was of such pressing moment as to cause this Court to so state and to then proceed to an analysis of the Montana law, we are at a loss to know. Certainly we are not reflecting upon the intelligence of this Court to the extent of insisting that it would spend so much time on a wholly immaterial matter. Of course this Court said in that connection:

"If such a policy exists, and the foreign liquidator is thus displaced, other questions may remain as to the power of the state which there is no occasion to consider in advance of the event."

Certainly that presupposes "other questions," not this question. Such for instance, as that perceived by the learned Justice of the Montana court when he showed that the doctrine of Blake vs. McClung was not violated by Montana law.

III. CLARK'S STATUS, WITH ALL OF THE ATTRIBUTES OF SUCH STATUS WHICH COULD BE GIVEN BY IOWA LAW AND IOWA JUDGMENTS, DOES NOT PERMIT HIM TO RIDE DOWN MONTANA LAW.

Petitioner has asserted no other question. He thinks that the status of Clark is a status that must be recognized and given exactly the same force in Montana that it is given in Iowa. Montana recognizes the status, but in harmony with what this Court has said as follows: First, in

> Security Trust Co. vs. Dodd, 173 U. S. 624; 43 L. Ed. 835.
>
> "In some states a foreign assignee under a statutory assignment good by the law of the state where made, may be permitted to come into such state and take possession of the property of the assignor there found, and to withdraw it from the jurisdiction of that state in the absence of any objection thereto by the local creditors of the assignor; but in such case the assignee takes the property subject to the equity of attaching creditors, and to the remedies provided by the law of the state where such property is found."

Or again, as was said in

> Fall vs. Eastin, 215 U. S. 1, 30 S. Ct. 3, 54 L. Ed. 65.
>
> "This doctrine is entirely consistent with the provisions of the Constitution of the United States which requires a judgment in any state to be given full faith and credit in the courts of every other state. This provision does not extend the jurisdiction of the courts of one state to property situated in another, but only makes the judgment conclusive on the merits of the claim or subject-matter of the suit."

Or again in

> Hale v. Allinson, 188 U. S. 56, 23 Sup. Ct. 244, 47 L. Ed. 380.

> "Whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery as they may be, his official relations in the court are the same. A statutory appointment neither enlarges nor diminishes the limitation under his action. His responsibilities are unaltered. Under either kind of appointment he has at most, only a passive capacity in the most important part of what it may be necessary for him to do, * * * he has no extraterritorial power of official action."

This Court, we think, did not intend to imply that unsound obiter dictum in Relfe vs. Rundle is to be applied, as can be seen from the following analysis:

(1) If Clark is a statutory successor he can have no more power than the corporation had.

(2) The corporation was bound by contract to permit this very thing. Clark, as statutory successor, was also bound.

(3) The sovereignty of Iowa is inalienable. Clark possessed none of it.

> Tanner vs. Little, 240 U. S. 369; 60 L. Ed. 691.
> Harrison vs. State etc. R. Co., 232 U. S. 318; 58 L. Ed. 621.

(4) The sovereign state of Iowa if suing in Montana, would have no more standing nor rights than her humblest citizen.

> 59 C. J. 299.
> 59 C. J. 318-19, Sec. 474.

(5) The Iowa liquidator statute was enacted in 1929. Chap. 233, Laws 43 Ass. Iowa. It was not brought to Montana when the corporation was admitted. The action out of which respondent's judgment arose was instituted in 1928. R. 72-82.

Clark's status as fixed by Iowa law was binding in Iowa. His status was such as to require at the hands of the Montana court that he be permitted to engage in litigation the same as any citizen. If he is statutory successor, his rights in that respect should be as broad as—no broader than—his predeces-

sor's rights. Neither he nor his predecessors can ride down Montana law.

IV. CLARK WAS GIVEN ALL THE MONTANA RIGHTS THAT SUCH STATUS AFFORDS IN MONTANA.

His status in Montana gives him no more rights than one of that status fixed by Montana law would have. Petitioner suggests, for illustration, the case of a marriage valid where made, but forbidden elsewhere because of consanguinity. The right of inheritance becomes involved in a state where such marriage, had it been consummated there, would be void. That state having control over property within its borders, would do as it pleased, and would not recognize that status if it interferred with local policy. But regardless of status, the rights in the property would be measured by the law of the forum.

If there were no public policy to the contrary in the foreign state, her status as wife incidentally fixes her right of descent. What she takes in the foreign state she takes under the grace of the latter's laws. She doesn't take what the law of the domicile says shall go to a widow there. She takes what the foreign state says a widow shall have.

Mr. Chief Justice Gray in Ross vs. Ross, 129 Mass. 243, 37 Am. Rep. 321, fully pointed this out. The rule has been recognized as valid ever since. Cheely v. Clayton, 110 U. S. 701, 28 L. Ed. 298, 4 Sup. Ct. 328. (Relying upon Ross v. Ross, Supra.)

12 C. J. 457, Sec. 42, says:

> "While in some decisions the broad general doctrine is announced that the law of the domicile controls as to the status of the individual, the better rule would seem to be that while the courts of one country will follow the lex domicilii, as to acts done in another in which the party has his legal domicile, they will not regard such law as following the person of the individual and as governing his acts when he is temporarily present in another jurisdiction. In this respect the several states of the Union stand in the

situation of other distinct sovereignties in so far as they are unrestrained by the Federal Constitution. The first branch of this rule results from the principle of comity which requires the courts of one sovereignty to recognize the laws of another as to acts done within its territorial jurisdiction when not contrary to the law or public policy of the forum or injurious to its citizens, while the second branch is a recognition of the undoubted right which each state has to determine the civil status and capacities of its inhabitants. **It is generally accepted also that no state will recognize a status existing under the laws of another state when foreign to its own laws, customs or institutions."**

18 C. J. 844; 18 C. J. 811.

Nichols & Shepard Co. vs. Marshall, 108 Ia. 518; 79 N. W. 282.

In 3 Enc. U. S. Sup. Ct. Dec. (a resume of this Court's decisions) 1026, it is said:

"Each state has the power by general laws to regulate the conveyance and disposition of all property, personal or real, within its limits and jurisdiction. Every state and sovereignty possesses the power regulating the manner and terms under which property, realty and personalty, within its dominion may be transferred by last will or testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it."

The rule is stated in a general authoritative work as follows:

"The dominion of a state over personal property within its borders is complete and its right to regulate its transfer and subject it to process and execution in its own way and by its own laws is unquestioned, though by a legal fiction generally recognized by comity personal property is supposed to adhere to the person of the owner and is usually considered as having no situs other than his domicile."

5 R. C. L. p. 927, and cases cited.

In State v. Crabbe, 151 N. E. (Ohio) 755, it is said:

"It is claimed that, since the receiver, Haavind has statutory powers not bestowed upon a receiver appointed by a court of equity the above authorities do not apply (Schloss v. Met. Surety Co., et al). The statute * * * is not before us, and hence it is impossible to judge what is the

> exact nature of his power. * * * However, the statutory nature of his appointment does not vest in him any property right or lien upon property situated in the State of Ohio superior to the liens of domestic policy holders upon the funds deposited for their benefit and security."

Clark v. Clark, 178 U. S. 186, 44 L. Ed. 1028, 20 S. Ct. 873.

Fall v. Eastin, 215, U. S. 1, 30 S. Ct. 3, 54 L. Ed. 65.

V. NO DISCRIMINATION WAS INDULGED AGAINST CLARK OR IN FAVOR OF MONTANA CITIZENS.

As long as Montana makes no discrimination between citizens of her own and other states, and provides the same remedies for both as that Court has said she does in this respect, the doctrine and public policy of Montana is valid and unimpeachable elsewhere.

It can therefore be plainly seen that this case has been decided. It is res adjudicata. No question remains. No other question is presented.

The only other question petitioner can think of which could be said to remain after such a decision, is stated as follows, by him:

"Either they have withheld faith and credit, or have indulged in a forbidden discrimination between a Montana liquidator and a liquidator appointed in another state." (Pet. p. 3).

This is a desperate torturing of the learned opinion of the Montana Court. The Montana Court in passing, pointed out that the nearest analogy to a liquidator existing under Montana law is that the last Board of Directors become trustees in Montana for that purpose. Iowa says that is his status.

Watts v. Southern Surety Co., 248 N. W. 347.

In invoking the Fourteenth Amendment, petitioner overlooks two important things. By statute, and by condition imposed upon the corporation, of which Clark can claim nothing

more than that he is successor, Montana was acting within constitutional right. So long as Federal Surety Company was not engaged in interstate commerce, there was no restriction in that respect. The business of insurance as conducted by insurance companies, has been held by this court not to constitute interstate commerce. Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297.

In such cases where the right cannot be claimed under the commerce clause, an insurance company or any company not engaged in interstate commerce, can have no complaint against any law whether discriminatory or not, made a condition to its entering and doing business within the state. Pembina Con. Silver Min. etc. Co. v. Penn, 125 U. S. 181, 31 L. Ed. 650.

Now, if petitioner thinks that we must have the same rule with regard to banks as with regard to insurance and all other corporations, he is foreclosed by all authority.

German Alliance Ins. Co. v. Hale, 219 U. S. 307, 59 L. Ed. 229.

State of Montana ex rel Powell vs. St. Bk. of Moore, 90 Mont. 539; 4 Pac. (2d) 717; 80 A. L. R. 1494;

VI. THERE IS ABUNDANT AUTHORITY INCLUDING DECISIONS OF THIS COURT, FOR SUSTAINING OF ALL GROUNDS OF THE MONTANA DECISION.

Fletcher on Corporations, Secs. 4406, 4410, 4412.

"The right to the equal protection of the laws is not denied when it is apparent that the same law or course of procedure is applicable to any other person in the state under similar circumstances and conditions." Tinsley v. Anderson (Tex. 1898), 171 U. S. 106, 18 S. Ct. 805, 43 L. Ed. 91. See also Williams v. Arkansas (Ark. 1910), 217 U. S. 79, 30 S. Ct. 493, 54 L. Ed. 673, 18 Ann. Cas. 865.

We submit that this Court did not indulge in an idle excursion into the Montana decisions to ascertain if Montana had

such public policy as the Montana Court now declares it to have, to prefer the rights of attachment or execution levies to the title of a foreign liquidator, without first weighing its materiality.

We have only to suggest that the learned author of the opinion (Clark vs. Williard, 78 L. Ed. 743) did not exhaust the authorities so holding, and the following could have been cited in addition to those cited by the learned author of the opinion:

Sec. Trust Co. vs. Dodd, 173 U. S. 624; 43 L. Ed. 835.

Booth vs. Bockis, 140 N. Y. 230; 23 L. R. A. 47.

State vs. Crabbe, 151 N. E. 755.

Carpinter & Baker vs. City Equit. Fire Ins. Co., 328 N. Y. 147; 144 N. E. 484.

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Great Western Min. Co. vs. Harris, 128 Fed. 321; (Aff. 198 U. S. 561; 49 L. Ed. 1163).

Zacker vs. Fed. Trust & Safety Valve Co., 106 Fed. 593; 14A C. J. 1394, Sec. 4112.

VII. THE TRUE TEST OF FULL FAITH AND CREDIT IS THAT FAITH AND CREDIT GIVEN LIKE JUDGMENTS AND A LIKE STATUS BY THE COURTS OF THE STATE WHERE SUCH ORIGINATE.

In the scholarly opinion of the Montana Court, it was pointed out that in all events the decision of the Iowa Court as to the effect of such judgments is controlling, and upon the doctrine of the Schloss case decided what Iowa holds the extra-territorial effect of such a judgment to be, and applied that effect.

Under the Federal Statute (Tit. 28, Sec. 687, U. S. C. A.) in supplement to Art. IV, Sec. 1 of the Constitution, Montana was only required to give such faith and credit to the Iowa

judgment as it had "by law or usage in the Courts of the State from whence certified."

In the Schloss case (Schloss, Metropolitan Surety Co., 149 Iowa 382, 128 N. W. 384) it was held that the New York statutory (charter) liquidator could not come into Iowa and displace liens of creditors on local assets, acquired after the liquidator's title had been obtained. Unless Iowa can be said to have two policies, one in favor of her local creditors against such judgments coming from without the state, and another and different one concerning her own identical judgments, the Montana Court is right in thus ascertaining the effect of this very judgment — this very status in Iowa. Iowa cannot have two such diverse policies without constitutional violation. In any final analysis this Court must apply the test, as did the Montana Court, as laid down in Title 28 U. S. C. A. Sec. 687. That test is time honored, and one which this Court will not disregard. When Iowa tells Montana and all other states, as she has done in the Schloss case, that a local creditor's lien is superior to that of a previously acquired but after asserted liquidator's title it settles the matter. 53 C. J. 105, 6; 32 C. J. 1040; Standard Bonded Warehouse Co. v. Cooper, etc., 30 Fed. (2d) 842; 53 C. J. 409, Sec. 692. That and nothing else, is the effect of such a judgment in Iowa, and that is the supreme test.

It is not overwhelming to note that the opinion in the Schloss case arises over a demurrer to an answer. To be justiciable, a legal question must arise some way. How it arose, as long as it was decided, is wholly immaterial.

In that case, the New York statute, as did the Iowa statute here, made the appointment. (See appendix to petition for writ, p. iii).

We respectfully submit that any quarrel that Clark may

have in this case, is a quarrel not with Montana law, but with the law of Iowa under the mandate of the constitution, Article 4, Section 1 and the Federal Statute, Title 28, Sec. 687, U. S. C. A. Iowa herself in the two cases Watt vs. Southern Surety Co., 248 NW, 347 and Schloss v. Metropolitan Surety Co., 149 Ia. 382, as well as other Iowa cases cited in those two, has told us the effect of just such a judgment with just such relationships and the Montana court has applied those effects. Clark must be able to bring to Montana, a different test than he has brought of the effect of those judgments in order to be entitled to complain.

VIII. "CHARTER LIQUIDATOR," ETC., ARE DERIVATIONS BY THE COURTS. THE EXTRA-TERRITORIAL TITLE IS THE SAME AS THAT OF RECEIVERS.

It must be remembered that the phrase "charter liquidator," etc., are interpolations. They are not always found in the statutes. They are terms invented by the courts. Iowa calls Clark simply "receiver." Watts v. Southern Surety Co., 248, N. W. 347. The only way they are arrived at, is through inference. The invention, we submit, is to distinguish two forms of receivership — chancery receivership, and statutory designation of a public officer as receiver. The one comes from the judicial branch of the government,—the other from the legislative branch. Either kind may vest title in the receiver. They are in such cases, **in invitum** proceedings when title is cast. The only distinction between the two is the extraterritorial one, viz., the chancery receiver has not the standing to sue in a foreign jurisdiction. The statutory receiver has such standing. The title of both—**the rights of both—as** against an attaching creditor in the foreign jurisdiction, if such be its public policy, are identical. Watts v. Southern Surety Co., 248 N. W. 347. There can

be no distinction in principle and there is none in law between them.

Security Trust Co. vs. Dodd, 173 U. S. 624; 43 L. Ed. 835.

Disconte Gesellschaft vs. Umbreight, 208 U. S. 570; 52 L. Ed. 625.

Clark vs. Williard et al, 78 L. Ed. 743.

IX. THE RELATION OF RESPONDENTS TO FEDERAL SURETY COMPANY AROSE INVOLUNTARILY.

Respondents were not bound by these alleged charter provisions. The relation of respondents arose involuntarily. A stockholder or policy holder of an insurance company should be bound by virtue of contract by the charter provisions. Not all courts so hold, however.

There is a decided distinction in the case at bar. The relationship was one brought about without the choosing and consent of respondents. They had no dealing with Federal Surety Company. They never voluntarily consented to the attachment bond out of which this liability arose. It was forced upon them. R. 29. The statutes of Montana allowed the plaintiff in the action to attach upon furnishing a bond. They furnished a bond with Federal Surety Company as surety. In Relfe vs. Rundle, the relationship was voluntarily contractual. So also in the Converse and Roche cases.

Respondents were neither made parties to the Attorney General's action, nor appeared in the case. The Federal Surety Company may have represented its stockholders, or even its policy holders, where their relationship had been voluntarily made. But to go so far as to bind these respondents by a judgment in which no one except the named defendant Federal Surety Company was a party is going pretty far. In 34 C. J. 1149 it is said:

The dissolution of a corporation in its own state does not have extra-territorial operation in a foreign state, where the corporation is doing business until the foreign state assumes jurisdiction to enforce the dissolution. Hammond vs. National Life Assn., 58 app. div. 453, 69 N. Y. S. 583 (appeal dismissed, 168 N. Y. 262, 61 N. E. 244) cit. note 89, 14a C. J. 1350.

Applying these two rules: We see that Iowa has not made stockholders nor foreign creditors parties by representation. Moreover, as the Montana Court has pointed out, the status of respondents was fixed before the assertion of Clark's judgment in Montana.

Dissolution even does not affect a contract, where it in effect provides for its continuance despite dissolution. 14 A. C. J. 1155, Sec. 3811.

Its charter powers are affected by local law. In 14 A. C. J. 1240 it is said:

> "The powers of a foreign corporation are limited not only by its charter and the laws of the state which created it, but also by the laws of the state in which it exercises its powers; all its operations are subject to such local laws as are made applicable. A corporation which seeks to establish a business domicile in a state other than that of its creation must take that domicile as individuals are always understood to do, subject to the responsibilities and burdens imposed by the laws which it finds in force there. It becomes amenable to the laws of the latter state and to the process of its courts, upon the same principle, and to the same extent as natural persons or domestic corporations."

> "Every power that a corporation exercises in another state depends for its validity upon the laws of such state, and a corporation can make no valid contract without their sanction, express or implied."

X. CLARK CAN ASSERT NO GREATER CHARTER POWERS THAN THE CORPORATION HAD IN MONTANA.

Now let us see how far these statutes, which are said to be

parts of a foreign corporation charter, go in case of insolvency. In 14 A. C. J. 1394, Sec. 4112, it is said:

> "A statute of the state of a corporation's domicile requiring a general assignment for the benefit of creditors by an insolvent corporation to be made for the benefit of all its creditors does not preclude a citizen of such state, and a fortiori it does not preclude a citizen of another state, from attaching property belonging to such corporation in another state. It is generally held that the property belonging to a foreign corporation within a state may be attached by residents thereof, although a receiver has been appointed in another state to whom, by the decree of the appointing court **or by some statutory provision of that state, title to such property or the right to its possession has been assigned,** but there is authority to the contrary."

There is cited as authority for this last clause but one case —Bockover v. Life Assn., 77 Va. 85.

Only where unrestrained by local law does the rule of Relfe vs. Rundle and Converse vs. Hamilton obtain. Both cases say so.

The Relfe case: "No state need allow the corporations of other states to do business within its jurisdiction, unless it chooses, but if it does **without limitation expressed or implied,** the corporation comes in as it has been created."

In the Converse case, a suit against a stockholder, he was of course bound by the charter, and by a law which prescribed that a receiver might maintain an action "against each stockholder, severally, in this state or any other state or country, where such stockholder, or any property subject to attachment may be found."

It takes a wide stretch of imagination to apply that case here to one whose right arose through an involuntary attachment bond. The attachment bond was executed in Montana, under her laws, and by the authority of them only.

The power to execute the bond might have been derived from the Iowa statute. Rights and liabilities would be determined by the law of Montana.

14 A. C. J. 1236.

The sole point decided in the Relfe case was the right to sue, and hence, derivable therefrom, the standing or status to remove a case to the Federal Court.

Anent the rule that the effect to be given a judgment or a statute of a sister state, is that given there by law or usage, we have to say, that, being the test, there is now **no right** to assert that petitioner is a "statutory liquidator." The Iowa court has held that her statutes allow survival of actions against all dissolved corporations, and characterizes the status of your petitioner who was appointed in like capacity for Southern Surety Co., as follows:

> "In respect to property of the defendant in this state the receiver stepped into the shoes of the defendant and was for this and other purposes representing the corporation in winding up its affairs. State v. Associated Packing Co., 210 Iowa, 754, loc. cit, 768, 227 N. W. 627, 633. In that case we said: 'While it is true the corporation was annulled, nevertheless, for the purpose of liquidating it and winding up its affairs, the receiver still represents the corporation, much in the sense that the directors and officers of a corporation whose corporate period has expired still continue to act for the corporation in winding up the corporation's affairs, and further because of the fact that the receiver has been appointed by a court having jurisdiction of the subject matter, to take over the assets of the corporation and act in the winding up of its affairs'."
>
> Watts vs. Southern Surety Co., 248 N. W. 347.
> State vs. Associated Packing Co., 210 Iowa 754; 227 N. W. 624.

When this case was remanded to the Montana court by this court, the Montana court was re-invested with jurisdiction. It pointed out to this court a rule of reciprocity recognized by this court as validly applying in controversies of this nature. Thus said this court in Hale vs. Allinson, 188 U. S. 56, 47 L. Ed. 380:

> "The question of comity cannot avail in a case where the courts of the state in which the receiver was appointed hold that an action similar to the one brought in the foreign jurisdiction cannot be maintained by him in the courts of the state of his appointment."

That announces the legitimate doctrine recognized in

> Hilton vs. Guyot, 40 L. Ed. 95; 11 C. J. 425; 12 C. J. 434 and 441.
>
> In re John L. Nelson Co., 149 Fed. 590.

In other words, the Schloss case and the Watts case tell us not only the view of Iowa as to the effect of her judgments, but also raise the rule of reciprocity.

We respectfully submit that there is no undecided question nor any question which vests this court with jurisdiction.

Respectfully submitted.

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